nious movement of the British Constitution has justly elicited the admiration of the profoundest minds, at home and abroad, how much more should we, mature in their experience, devoutly desire the perpetuation of our own.

C.

THE EVIDENCE IN PALMER'S CASE.[1]

1. The Queen *vs.* William Palmer. Official report of the minutes of evidence on the trial at the Central Criminal Court, May 14 to May 26, 1856. George Hebert, 88 Cheapside, London.
2. The "Times" report of the trial of William Palmer for the murder of John Parsons Cook, at Rugely. Ward & Lock, 158 Fleet street, 1856.

The trial of William Palmer, indicted for the willful murder of John Parsons Cook, demands some notice in our pages, for other reasons than the enormity of the offence perpetrated, or the extraordinary interest which it has produced throughout every grade of society.

It is difficult accurately to define what should make one trial more than another among the *causes célèbres*. Sometimes the high position or peculiar relationship of the parties concerned,—sometimes the barbarous cruelty employed, or the remarkable agents engaged to effect crime, or the marvelous mode in which detection has ensued, may give an unusual character to a prosecution; at others a romantic tone and conflicting doubts as to the verdict have left the impress of a real or false notoriety upon the proceedings in the Criminal Court. In later times, the trials of Thelwall, Rush, Greenacre, and Courvoisier, in England, of Burke in Scotland, of Kirwan in Ireland, of Madame Laffarge in France, of Webster in America, are all fresh in the memory, from some of the causes we have referred to; and the case of William Palmer, investigated at the Central Criminal Court from May 14th to May 26th, in the

[1] From the London Law Mag. p. 332, Aug. No. 1856.

present year, will also henceforth take its place along with them. But the trial of Palmer has other and considerable value to us and our legal readers besides that of its being either interesting or remarkable; and we draw attention to it here chiefly because it raises important questions connected with criminal jurisprudence.

Although our readers are probably not unacquainted with the leading facts of the case through the daily press, we will nevertheless briefly recapitulate them, before we draw attention to the points to which we propose more especially to confine our observations. This is rendered the more requisite from the lengthened duration of the trial, and the amount of evidence given thereon. The trial lasted for no less than twelve days, during which eighty-two witnesses were examined, forty of whom were of the medical profession or connected with its practice.

The case for the prosecution, then, which was founded on circumstantial evidence, and which we may divide into the general and medical, was this;—both Palmer the poisoner, and Cook the deceased, were on intimate terms, following the same pursuit, commonly called the "Turf," which, whatever may once have been its character, appears, at the present day, to embrace an amount of low blackguardism and systematic swindling out of all proportion to the better qualities of sportsmanship which were wont to be attributed to it. In November, 1855, Palmer was in desperate difficulties; his liabilities appear to have amounted to about 20,000*l.* Writs had already been issued out against him, as well as against his mother, on account of bills of exchange. On some of the bills in question (purporting to represent a sum of 11,500*l.*) the name of Mrs. Palmer had been unlawfully placed, and it hardly admits of doubt that the forgery of her name had been committed by the prisoner himself. Ruin and exposure were thus impending over him, and he was endeavoring strenuously to stave off for a short time the demands of a creditor who held the bills. Now, it happened that on the 13th of November, Cook won a very considerable sum of money—between 1,000*l.* and 2,000*l.*, in stakes and bets—on a race at Shrewsbury, and he had in his possession immediately after the races on that occasion upwards of 700*l.* in bank notes.

And here commences the horrible detail of a deliberate system of poisoning. Whilst in Palmer's company on the evening following the race, Cook, immediately upon swallowing some brandy-and-water, vomited violently, and declared that there was "something in it," and that it burnt his throat dreadfully, and that "Palmer had dosed him." He recovered from this attack of sickness, and both men left Shrewsbury for Rugely, and remained there in the society of each other during the next three days, Cook, however, still continuing to suffer from sickness, and Palmer for the most part superintending the administration of his food; but the evidence showed, that whenever nutriment happened not to come through Palmer's hands, vomiting did not supervene. Upon the *post-mortem* examination, antimony was found, and the prosecution suggested that the sickness resulted from its administration during the period we are now alluding to. We now come to the Monday (19th November) subsequent to the Shrewsbury races. Palmer left for London on the morning of the day (having previously given Cook some coffee, which made him sick, as before), and returned in the evening. He had employed the day in "settling" Cook's sporting debts in London, and appropriating them, as it appears, to his own purposes. In the evening Palmer re-appears at Rugely, and, according to the evidence of Charles Newton, obtained from the latter person three grains of strychnia; he is afterwards found in the bedroom of Mr. Cook, who had been better during the day. Pills had been prescribed for him by the medical attendants, to be taken in the evening.[1] At midnight, he is seized with frightful convulsions; his screams are heard by the inmates of the hotel. Palmer comes over from his house on the other side of the street to him, administers some medicine, and he recovers from the attack. The next morning Palmer purchases at another doctor's shop in Rugely *six*

[1] It will be observed that we do not follow the evidence of Mr. Jeremiah Smith, the solicitor, in this case. The reasons will be found in the summing up of Lord Campbell, who, amongst other things, said, of the respectable "professional man,' "Can you believe his evidence when he acknowledges himself to have been engaged in such fraudulent transactions, and, being now examined upon oath, denies his own attestation to that document? Of his credit you are the judges," &c. &c.

grains of strychnia, two drams of prussic acid, and two drams of Battley's solution of opium. In the evening of this day Palmer administers two pills to Cook. Vomiting and convulsions ensue; and in the course of an hour or thereabouts Cook dies in frightful agony. A *post-mortem* examination is held at the instance of his father-in-law. The viscera are placed in jars, sent up to London; Palmer endeavors to bribe the post-boy to break them; but they are conveyed safely to London, submitted to the tests of Dr. Taylor and Dr. Rees. These gentlemen find, as already stated, antimony, but no strychnia. Palmer had been searching the dress and bed of the deceased, and when the money, supposed to have been in Cook's possession, and his betting-book, are sought for, they are not found, and no traces of either, as far as is known, have ever been heard of. We may pass over various other points of suspicion against the prisoner; the mysterious cutting of the bladder on the mouth of the jars—the attempts to tamper with the postmaster, and his communication with the coroner, as well as various other circumstances detailed on the trial.

We have merely offered an outline of the facts of the case, which, as seen from what we have said, is one of circumstantial evidence. The great difficulty of the prosecution lay in the proof of the *corpus delicti*, or, in other words, in showing that the deceased was *poisoned*, as alleged in the indictment. As it has been said by a learned writer on circumstantial evidence,[1] "In the proof of criminal homicide, the *true cause* of death must be clearly established; and the possibility of reasonably accounting for the event by self-inflicted violence, accident, or natural cause be excluded; and only when it has been irrefragably proved that no other hypothesis will explain all the conditions of the case, and account for all the facts, can it be safely and justly concluded that it has been caused by intentional injury; but in accordance with the principles which govern the proofs of every other element of the *corpus delicti*, it is not necessary that the cause of death should be verified by direct and

[1] Mr. Wills. See chap. vii. of his treatise "On the Proofs of the *Corpus Delicti* by Circumstantial Evidence.

positive evidence; it is sufficient if it be proved by circumstantial evidence which produces a moral conviction in the minds of the jury equivalent to that which is the result of positive and direct evidence."

That proof of the *corpus delicti* in cases of willful homicide may be established as well upon the grounds of presumption as by direct evidence, is clearly a legal necessity; otherwise the secrecy which attaches to assassination (rendering the crime all the more revolting) would afford certain protection to the worst offenders against society; and the skillful poisoner might, indeed, pursue his hideous art with perfect impunity.

In a recent number of the *Law Magazine*[1] we discussed the subject of "Presumptions in Criminal Cases," and we then took the opportunity of referring to the judgments in Burdett's case (4 B. & Ald. 121.) These are, however, so apposite to our present purpose, that we shall be excused in again drawing somewhat from the same source. "It has been said in the arguments in this case," observes Mr. Justice Best, "that there is to be no presumption in criminal cases. Nothing is so dangerous as stating general abstract principles. We are not to presume without proof; we are not to imagine guilt when there is no evidence to raise the presumption; but when one or more things are proved, from which our experience enables us to ascertain that another not proved, must have happened, we presume that it *did* happen, as well in criminal as in civil cases. Nor is it necessary that the fact not proved should be established by irrefragable inference. It is enough if its existence be highly probable, particularly if the opposite party has it in his power to rebut it by evidence, and yet offers none; for then we have something like an admission that the presumption is just." The learned judge appends, however, one valuable remark to the above; viz: that when presumption is attempted to be raised as to the *corpus delicti*, "it ought to be strong and cogent." In the same case another learned judge also (Mr. Justice Holroyd) pertinently remarked concerning these presumptions, that "they stand only as proofs of the

[1] London Law Magazine for Nov. 1855, No. cix. p. 374.

facts presumed till the contrary be proved, and then presumptions are either weaker or stronger, according as the party has, or is reasonably to be supposed to have it in his power to produce other evidence to rebut or to weaken them, in case the fact so presumed be not true, and according as he does, or does not produce such contrary evidence." We may remark, in passing, that this last observation applies closely to Palmer's case; for the fact of its lying in the prisoner's power to explain the possession and the use of the strychnia, and his *not* doing so, most material in enabling the jury to come to a verdict. Those who watched the proceedings day by day, anticipated, from the course which the trial was taking, that the employment of the six grains of strychnia (undoubtedly in the prisoner's possession at a critical time) would have been attempted to have been accounted for. It was continually being asked during the defence, "When is the poisoned dog to be produced?" or, "Where is the man who laid the bait for the vermin?" No attempt, however, to adduce such evidence was made.

To revert, however, to the mode of proving the *corpus delicti*, when the charge preferred is of murder by poisoning. It has, indeed, been contended by some authorities, that no charge of this kind should be considered as substantiated unless the poison shall have been discovered in the body; yet this is certainly not a rule of English law.[1] When such evidence is attainable, it is essential that it should be produced; when it is *not* attainable, other evidence is admissible for the purpose.

"In most criminal charges," says Mr. Wills, "the proof of the *corpus delicti* is separable from that which applies to the discrimination of the guilty individual; but it is not so in the cases of poisoning, where it is generally *impossible* to obtain conclusive evidence of the *corpus delicti*, irrespectively of the explanatory evidence of moral conduct and circumstances. It therefore almost of necessity happens, that there is a concurrence of all or most of these different kinds of evidence, and that the result depends not merely upon their separate force, but upon that additional force

[1] See this point discussed in Dr. Christison's Treatise on Poisons, 4th edit., pp. 68, *et seq.*

which is the consequence of their combination." So in the summing up of the evidence in Tawell's case, the able judge who presided expressed himself with his usual perspicacity on the subject. "In considering," said Mr. Baron Parke, "whether or not death was caused by prussic acid, the jury was not to abstain from *looking at the conduct of the prisoner as a part of that question;* they must look *at all the circumstances* of the case," and see whether the prisoner's conduct, and the fact that the poison was in his possession, "did not strengthen them in the conclusion that the scientific witnesses had properly arrived at the result, that beyond all doubt prussic acid was the cause of death." Scientific evidence, therefore, as has been laid down, must, in the class of cases now referred to, be taken in combination with other evidence adduced—the moral conduct of the accused, and the surrounding circumstances. Indeed, if we look to other great criminal trials, we shall find the same doctrine affirmed in practice. The case of John Donellan, tried before Mr. Justice Buller, at the Warwick assizes, in 1781, for poisoning Sir Theodosius Boughton with laurel-water, affords a notable instance of very slight evidence being given of the deceased having died by poison; the real strength of the evidence adduced, and that upon which the prisoner was convicted, being derived from other circumstances; such as the conduct of the prisoner, and other grounds of grave suspicion. On the best medical authority in this case, indeed,—that of John Hunter,—it was deposed that the symptoms exhibited by Sir Theodosius did *not* necessarily lead to the conclusion of the deceased having been poisoned at all. Whether the conviction there was, or would be now deemed satisfactory, it is not our purpose to inquire. We have cited it rather as an instance where direct evidence in poisoning cases has been dispensed with.

The mode of receiving and treating such evidence is of course one of the most important duties to be performed on criminal trials; and a judge in summing up has the office assigned to him of explaining and helping the jury to estimate its value and applicability. The summing up of Lord Campbell on Palmer's trial was not acquiesced in by the counsel for the defence; and the objection thereto is not undeserving of notice. At the close of the charge in

question, it will be remembered, the following discussion took place:[1]—

Serjeant Shee:—"The question which your lordship has submitted to the jury is whether Cook's symptoms were consistent with death by strychnia."

Lord Campbell:—"That is not the question which I have submitted to the jury; it is *a* question. I have told them that unless they consider the symptoms consistent with death by strychnia, they ought to acquit the prisoner."

Serjeant Shee:—"It is my duty not to be deterred by any expression of displeasure; it is my duty to a much higher tribunal than your lordship's to submit what occurs to me to be the proper question. I submit to your lordship that the question whether Cook's symptoms are consistent with death by strychnia is a wrong question, unless it is followed by this: 'and inconsistent with death by other and natural causes;' and that the question should be whether the medical evidence establishes beyond all reasonable doubt the death of Cook by strychnia. It is my duty to submit this."

Mr. Baron Alderson here interposed with what sounds like a curious apology for an omission in the summing up of the Chief Justice. He exclaimed, "It is done already—*you have done it in your speech.*"

Lord Campbell thereupon proceeded to explain the part of the summing up complained of. He said:—"Gentlemen, I did not submit to you that the question upon which alone your verdict was to turn was whether the symptoms of Cook were those of strychnia; but I said that that was a most material question, and I desired you to consider it. I said that if you thought he died from natural disease—that he did not die from poisoning by strychnia—you should acquit the prisoner; but then I went on to say that if you were of opinion that the symptoms were consistent with death by strychnia, you should consider the other evidence given in the case, to see whether strychnia had been administered to him, and whether it

[1] See *Times* Report. The Official Report does not give the speeches or summing up.

had been administered by the prisoner at the bar. These are the questions that I again put to you. If you come to the conclusion that those symptoms were consistent with death from strychnia, do you believe that death actually resulted from the administration of strychnia, and that that strychnia was administered by the prisoner at the bar? Do not find a verdict of 'guilty' unless you believe that '*the*' *strychnia* was administed to the deceased by the prisoner at the bar."

Now, whether the form of putting the question proposed by Serjeant Shee would have been improper or no, there is no doubt but that the case for the prosecution was stated in that shape; viz. that the symptoms of the deceased were inconsistent with death by other and natural causes; and further, as we shall presently see, that the testimony of eminent medical men, called on behalf of the Crown, afforded the answer to the question, as Serjeant Shee submitted it should be put, but conclusively against the prisoner; for they affirm that the symptoms deposed to admitted only of the hypothesis that the deceased suffered from, and died in consequence of, swallowing strychnia. In connection with the mode of leaving to the jury evidence of the kind under discussion, we may cite the summing up of Mr. Baron Parke in the case of Tawell:

"This being a case of circumstantial evidence," said the learned baron, "I advise you, as I invariably advise juries, to act upon a rule that you are first to consider what facts are already distinctly and indisputably proved to your satisfaction; and you are to consider whether these facts are consistent with any other rational supposition than that the prisoner is guilty of the offence. . . . . The point for you to consider is whether, attending to the evidence, you can reconcile the circumstances adduced in evidence with any other supposition than that the prisoner has been guilty of the offence? If you cannot, it is your bounden duty to find him guilty; if you can, then you will give him the benefit of such a supposition. All that can be required is, not absolute positive proof, but such proof as convinces you that the crime has been made out."

In another part of the same charge the learned judge, in refer-

ence to the argument urged, that the deceased might have died from sudden emotion, remarked that it undoubtedly was within the range of possibility that a person might so die, without leaving any trace on the brain; but the jury were to determine if they could attribute death to that cause; if they found strong evidence of the presence of poison, and further, when the result of the evidence gave them the existence of a cause to which death might be rationally attributed, they were not to *suppose* it was to be attributed to any other.

These are cases easily to be conceived, in which—unless the jury were convinced that the symptoms attending a death were inconsistent with every other theory except that of death by a specific poison—a conviction would be most dangerous, but we cannot pursue this subject here any further.

The jury in Palmer's case asked no questions during the very prolonged sittings, and gave no overt sign, as we have heard, which could enable any one to prophesy how their minds were disposed with respect to the evidence; but we believe there was no necessity to have mistrusted its proper effect, had it been even left to them in the way suggested by the counsel for the defence.

We will now proceed to notice briefly the medical evidence against Palmer.

The medical evidence in question may be divided into two parts; first, that of chemists who have deposed to the nature and value of analytical tests for the purpose of discovering poisons; secondly, that with respect to the operation of poisons (especially strychnia) physiologically upon animal life.[1]

[1] The following account of a paper on this subject, read at the late meeting of the British Association for the Advancement of Science, is taken from the *Athenæum* of August 22, 1856:—

"On several new Methods of detecting Strychnia and Brucia; a new Method of extracting the Alkaloids from Nux Vomica for Toxicological and Manufacturing Purposes. Experiments on Animals with Strychnia, and probable Reasons for Non-detection of Strychnia in certain Cases. A new Method of instituting Post-mortem Researches for Strychnia. By Mr. T. Horsley.

In the first lecture Mr. Horsley observed, that the circumstances attending Palmer's trial induced him to make a series of experiments on the subject, and he

Observations fell both from the bar and the bench on this trial which have drawn serious attention to the character of the medical

tried the effects of a precipitant formed of one part of bichromate of potash dissolved in fourteen parts of water, to which were afterwards added two parts in bulk of strong sulphuric acid. This being tried upon a solution of strychnine, the bulk was entirely precipitated in the form of a beautiful golden-colored and insoluble chromate. The experiment, as performed by Mr. Horsley, was very interesting, and scarcely a trace of bitterness was left in the filtered liquor. He did not claim to have originated this discovery of the use of a chromic salt and an acid liquor; but the point to which he called attention was the essential difference in the mode of application; and he maintained that it was as much out of the power of any human being to define the limit of sensibility which he had attained, as it would be to count the sands or to measure the drops of the ocean. Taking thirty drops of a solution of strychnia, containing half a grain, he diluted it with four drachms of water. He then dropped in six drops of a solution of bichromate of potash, when chrystals immediately formed, and decomposition was complete. Splitting up the half grain of strychnia into millions of atoms of minute crystals, he said that each of these atoms, if they could be separated, would as effectually demonstrate the chemical characteristics of strychnia as though he had operated with a pound weight of the same. He then showed the chemical reaction with those crystals. Dropping a drop of liquor containing the chromate of strychnia into an evaporating dish, and shaking it together, he added a drop or two of strong sulphuric acid, and showed the effect, as previously noted. He next showed the discoloration produced in chromate of strychnia and chromate of brucia by sulphuric acid, the former being changed to a deep purple, and then to a violet and red. It had been asserted since the trial of Palmer, that the non-detection of strichnine in the body of John Parsons Cook was owing to the antimony taken by the deceased having somewhat interfered with the tests. Such a supposition was, in his (Mr. Horsley's) opinion, absurd. Nothing, he considered, could more incontestably disprove the fallacy than either of two new tests which he then performed. These he considered double tests, because they had first the obtainment of a peculiar crystalline compound of strychnine, which was afterwards made to develope the characteristic effects by which strychnine is recognized. Mr. Horsley next related a series of experiments which he had made on animals with strychnine, and entered into the probable reasons for its non-detection in certain cases, although (as he had just shown before) a method of detecting infinitesimal quanties of strychnia by tests. He procured three rats at seven o'clock P. M.; he (assisted by Dr. Wright) gave each rat a quarter of a grain of powdered strychnia, and two hours afterwards a quarter and half a grain more to one of the three. Next morning, at four o'clock, they were all alive, and had eaten food (bread and milk) in the night; but at seven, or a few minutes after, they were all dead. The longest liver was one of the rats that had only had a quarter of a grain. In about three hours afterwards he applied the usual test, but could not detect the least indication of strychnine in the precipitate. There was, moreover, a total

portion of the evidence. "I reverence the man," says the Attorney-General, "who from a sense of justice and an innate love of truth comes forward on behalf of any accused person who is in danger of being swept to destruction by the torrent of prejudice; but I have *no language to express my abhorrence for that traffic testimony which from professional pique, or for the sustentation of a particular theory, men of science—I grieve to say it—occasionally are led to offer.*" "Audacity" and "dishonesty" are also charged to the

absence of bitterness in all the liquor. He tried every part of the bodies of the rats with the like results. What, then, became of the strychnine? Had it been decomposed in the organism, and its nature changed, as Baron Liebig intimated? As to the non-detection of strychnine, he thought it not improbable that the strychnine might have become imbibed into the albumen or other solid matter, and so abstracted from the fluid, forming by coagulation (say, for instance, in the blood) a more or less insoluble albuminate. This idea had occurred to him from noticing the coagulation of the glairy white of egg with strychnine, and the fact of his not recovering the full quantity of the alkaloid whenever he had introduced it. At any rate, it merited consideration. In his second experiment he administered three-quarters of a grain of strychnia to a wild rat, but the animal evinced little of the effects of poison, and it was purposely killed after five days. His third experiment was with two grains of strychnia, administered as a pill, wrapped up in blotting-paper, to a dog—a full-sized terrier. It was apparently quite well for five hours, when the operator went to bed, but was found dead next morning, but lying apparently in the most natural position for a dog asleep. When taken up, blood flowed freely from its mouth. On opening the animal (continued Mr. Horsley) I fonnd the right ventricle of the heart empty of blood, whilst the left was full, some of the blood being liquid, and some clotted. The stomach was carefully secured at both its orifices, and detached. On making an incision, I was surprised at not seeing the paper in which I had wrapped the pill, naturally expecting it would have been reduced to a pulp by the fluid of the stomach. I therefore sought for it, and lo! here it is, in precisely the same condition as when introduced into the gullet of the dog, and containing nearly all the strychnine. I have been afraid to disturb it until I had exhibited it to you, and now I will weigh the contents, and ascertain how much has been absorbed or dissolved. This experiment is important, as showing the small quantity of strychnia necessary to destroy life; and, had I uot been thus particular to search for the paper envelope, it might possibly have led to a fallacy, as I must have used an acid, and that would have dissolved out the strychnia, and the inference would have been that it was obtained from the contents of the stomach, whereas it had never been diffused. In this case also none of the absorbed strychnia was detectable in the blood, or any part of the animal, although the greatest care was observed in making the experiments."

account of certain medical witnesses by the counsel for the prosecution, and in unmistakable language. Again, Lord Campbell, in his summing up, observed: "With regard to the medical witnesses called on the part of the prisoner, I must observe, that although there were among them gentlemen of high honor, consummate integrity, and profound scientific knowledge, who came here with a sincere wish to speak the truth, there were also gentlemen whose object was to procure an acquittal of the prisoner. It is, in my opinion, indispensable to the administration of justice that a witness should not be turned into an advocate, nor an advocate into a witness. You must say, gentlemen, whether some of those who were called for the prisoner belonged to the category I have described—that of a witness becoming an advocate. . . . . You recollect the way in which Dr. Nunneley gave his evidence, and you must form your own opinion as to the weight to be attached to it. Certainly he seemed to display an interest not quite becoming a witness in a court of justice; but you will give every attention to the facts to which he refers, and to the evidence he gives." There were also other remarks made which it is needless to recall here, but which convey reflections on the medical evidence enough to demand from us some investigation into its real character. And let it be remembered, that if it should ever unfortunately become a well-recognized fact that there is a regular witness-market, whence may be procured scientific, professional, or technical evidence as it may be wanted, the most dire consequences must ensue. There will be placed in the hands of a powerful and malignant prosecution a frightful engine for cruel injustice; for, we may depend upon it, its use and application will not be confined to defences. And out of this evil, moreover, will grow another, viz., scepticism as to the real value of this species of evidence whenever it is produced; and that which ought to be of paramount importance in arriving at the truth, will be reduced to a useless parade of tainted testimony.

Let us take, in the first instance, the evidence adduced in the case before us with respect to the chemical experiments employed to discover the presence of strychnia. Dr. Alfred Swaine Taylor, of Guy's Hospital, was an important witness here; and he stated

that, on the examination of Cook's body, he found no prussic acid, opium, or strychnia: "With reference to the search for strychnia, the part which I had to operate upon was in the most unfavorable condition that could possibly be for finding that poison if it had been there;" and he proceeded to explain such condition. Dr. Rees confirmed this statement in almost the same language. Both of these scientific men further affirmed that "the poison is first absorbed into the blood, it is thus circulated through the body, and it especially acts on the spinal cord;" that is, the part of the body from which the nerves affecting the voluntary muscles, proceed. "I believe," says Dr. Rees, "that strychnia is absorbed before it produces its symptoms. If by accident or design enough strychnia is given to destroy life, *that might be the consequence, I believe, without my being able to discover it after death. I quite agree with Professor Taylor* that it is the *excess* you find; that when vitality is destroyed by the excess of the poison, and an excess remains, you can *discover that with care, sometimes.*" . . . . "I saw the experiments which Dr. Taylor tried on four of the rabbits, not on the fifth. I assisted in the analysis made of the animals; we destroyed four animals, and failed to detect it in three." Dr. Taylor himself gave his opinion broadly on the question of discovering strychnia, and said that the statement, that if strychnia caused death, it would always be found in the body, *is untrue.*

It should be observed, however, that it was admitted by Dr. Rees that "we have no facts with reference to strychnia on which to found our judgment" as to its action as a poison by absorption; but Dr. Robert Christison confirmed the theory, and stated his opinion that when the quantity of strychnia is small, he would not expect to find it; but when there is an excess over the quantity necessary to destroy life by absorption, he would expect to find it, assuming that the excess is considerable. The ordinary tests upon the same authority are affirmed to be "uncertain in some respects." Dr. Christison added, with reference to the particular analysis which had been made in this case, that if he had been called upon to analyze such a stomach, he would have entertained no reasonable expectation of doing any good with it, unless a considerable quantity

of the poison had been present. This theory of "absorption" and "excess" is perhaps more clearly (though modestly) expounded by Mr. George Morley, a surgeon.[1] "Is it your theory," he is asked, "that in the act of poisoning, the poison is absorbed and ceases to exist as poison—as strychnia?" "I am inclined to think so. I have thought much on that question, but have not decided in my mind. I incline to think it is so. I believe a part undergoes a chemical change." On being pressed by the court upon the statement, he says, "I believe part may be absorbed unchanged, a part may undergo a chemical change, and a part may remain in the stomach unaltered." Dr. Taylor's version of the theory is substantially the same—"Strychnia is in a great part, too, changed in the blood; it undergoes a chemical change;" and he adds, "Supposing the minimum of the dose required to destroy life to be given, I do not think I should find any."

Now let us see what the chemists for the defence depose upon the same subject. Dr. Nunneley says, "I have experimented upon the bodies of animals poisoned by strychnia, with a view of discovering the strychnia poison in the body, the body being in various stages of fermentation and decomposition, from a few hours after death, at various periods up to the forty-third day, the body being quite putrid in the latter cases. I have not failed in any one case to discover the poison by the tests which I have applied." Again, he is asked, assuming Cook had died of strychnia, whether the poison *ought* to have been found by proper chemical analysis? and he replies that, "if death were produced by a minimum dose of strychnia, there would be no decomposition that could prevent the discovery of it;" "it would remain as strychnia in the system."

Next comes Mr. William Herapath, Professor of Chemistry and Toxicology at the Bristol Medical School, who says, "I am of opinion, as a chemist, that when strychnia has been taken in a sufficient dose, it ought to be detected by chemical science up to the time that the body is decomposed. I do not think putrefaction would decompose it completely. By decomposition, I mean when the body has become a dry powder." And again, "having heard

[1] Official Report, p. 101.

the evidence as to the jar which was conveyed to Dr. Taylor, I am of opinion that the jar containing the stomach, as is now stated, in the state it then was, *from my chemical knowledge, that strychnia ought to have been detected if it existed there!*" Some irregular attempt was made by the prosecution to show that this witness had formed and expressed an opinion that the poison had really been administered, but that Dr. Taylor could not find it; but the so-called "opinion" turned out to have been only expressed in conversation turning upon newspaper stories, and Mr. Herapath's evidence as to the conclusiveness of chemical tests was left as we have recounted it. Dr. Julian Edward Disbrowe Rogers affirmed to the same effect, and deposed, moreover, to the fact that he had found strychnia in the blood of a poisoned animal by color tests, and to his belief (assuming Cook had died of this poison) that he, the analyst, should be able to find it *now* in the tissues of the body. Dr. Letheby denies that when strychnia is absorbed into the blood the poison is changed, or that the coloring tests are fallacious, and says, that if the poison had been in the jars submitted to Dr. Taylor, he ought to have found it.

Dr. Francis Wrightson (introduced as a pupil of Liebig, and lauded by the court for the manner in which he gave his evidence) appeared also as witness for the defence, and thus deposed: "I have found no extraordinary difficulties in the detection of strychnia; in my opinion it is a poison to be detected by the usual tests. I have detected strychnia pure, and I have also discovered it when mixed with impurities, after separation from such impurities. I have detected it in mixtures of bile, bilious matter, and putrefying blood; . . . . . it can be detected in the tissues. . . . . I have heard the theory propounded by Dr. Taylor as to the decomposition of strychnia by the act of poisoning. I am of opinion that *strychnia does not undergo* decomposition in the act of poisoning. If a man," continued Dr. Wrightson, referring to the case of Cook, which was put before him, "had *certainly* been poisoned by strychnia, I should *certainly* expect to find it." Dr. William Macdonald adhered to the same view also, and, moreover, stated, that to his knowledge no scientific man before Dr. Taylor

had ever propounded the theory that strychnia is decomposed on absorption, which he rejected altogether, as he did too the supposed fallaciousness of color tests. The contradictions here are manifest and great. High authorities affirm very positively that, by proper chemical tests, the fact of the strychnia having been administered ought to have been satisfactorily determined, while the distinguished analysts employed by the crown excuse their not finding the poison, first, from the facts of the difficulties which they allege surrounded the case; and, secondly, they explain their failure by a theory which it would seem is not sustainable, viz: that of the decomposition of the poison after it has been absorbed into the circulation. If the medical part of the evidence for the prosecution had merely rested on this testimony, the jury could not, we think, have come to the conclusion that the unfortunate man Cook had been poisoned by strychnia; for, assuming Drs. Taylor and Rees to have been the skillful analysts which they are represented to be, there would have been good ground, considering all the evidence adduced, to have inferred that probably strychnia was *not found* in the body, because it *was not* there. There remains, however, the second division of the medical evidence to which we have referred, viz: that which related to the symptoms preceding the death of the unfortunate person Cook.

Many were the witnesses who were called to give evidence as to the symptoms displayed by animals generally poisoned with strychnia, and as to the nature of its operation on human life. On the part of the prosecution appeared Mr. Thomas Blizard Curling (of the London Hospital), Dr. Todd (of the King's College Hospital), Sir Benjamin Brodie, Dr. Solly, and several other practitioners, who either were supposed to have great general knowledge on the subject, or who had had in their practice particular experience in cases of poisoning by strychnia.

The proposition of the counsel was, that Cook had died of *tetanus*, produced by strychnia. It was therefore essential to show how the symptoms in his case were distinguishable from traumatic tetanus—that caused by wounds or idiopathic tetanus, which, as not arising from external injury, we may popularly call constitutional. The

symptoms upon which the medical witnesses had to form their opinion were principally those deposed to by the local practitioner, Mr. W. H. Jones (who was present with the deceased when he died), and by the chambermaid, Elizabeth Mills, and they all gave their deliberate opinion that the symptoms described were not consistent with any form of traumatic or idiopathic tetanus. "Perhaps I had better say at once," says Sir Benjamin Brodie,[1] "that I never saw a case in which the symptoms that I heard described arose *from any disease*. When I say that, of course I refer, not to particular symptoms, but to the general course which the symptoms took."

Again, as opposed to the above evidence, we will take that of Dr. Letheby, who says, "I have heard certain symptoms described as attending the death of Mr. Cook. I have witnessed many cases of death from poisoning by strychnia—many of the lower animals; and several cases of poisoning by *nux vomica* in the human subject, one of which was fatal. The symptoms that have attended the cases of the animals that I have seen, *do not accord* with the symptoms described in this case;" and he then mentions the distinctions of the symptoms; such as the interval of time between the poison being administered and the convulsions supervening, the state of the heart, &c.; and he avers that "Mr. Cook's death is irreconcilable with everything I am acquainted with." So Mr. Partridge "could form no positive judgment as to the cause of death," but thought it was most important in a case of death from convulsion to examine the spinal cord shortly after death; and he further held that the symptoms described, were in several points, inconsistent with death by strychnia. Again, Mr. John Gay, of the Royal College of Surgeons, affirmed that "in the event of a given set of symptoms—tetanic symptoms—being proposed, it would be extremely difficult, if not impossible, without some other evidence, or collateral evidence, to assign it to any given disease or cause." "The cause of death," says a Dr. William Macdonald, "was epileptic convulsions, with tetanic complications." Other witnesses also were called to support the theory

[1] Official Report, p. 99.

that epilepsy might have been the cause of Cook's death; and one learned person proposed the explanation of *angina pectoris*. "Looking at this case, with the interval occurring between the two fits, I should, speaking scientifically, certainly say that the person suffering under them was more likely to be laboring under *angina pectoris* than strychnia."[1]

The above account of the conflict of medical evidence is calculated to suggest painful ideas. Either the subject is very obscure, and these scientific witnesses have rashly dogmatized where they should have been modestly silent; or, while the facts of the case were such as to warrant certain obvious conclusions, others were promulgated in fraud of justice, and in contempt of truth. In "running-down cases,', when the pot-house friends of the cabman combine to make his story good, and the uneducated companions of the van-proprietor conspire to support *his* version of an accident; or in gross election disputes, we expect, and assuredly find, perjury of all degrees and shades, from that of the strong partisan, who first persuades himself of an untruth, more or less firmly, and then steps forward to depose to it more or less stoutly, to the hardy miscreant who believes something or *nothing*, as the case may be, but who will swear *anything*, and "come up to the mark," for the proper consideration. But we hope we are not driven to infer from Palmer's case, as some do not hesitate to say we must, that, under the shelter of professional technical knowledge (which can be less easily tried by the tests of ordinary knowledge,) a body of so-called scientific men may be procured to violate truth, and dishonor the name of science.

We have not, be it observed, pursued in detail the cross-examination, or described the demeanor of certain witnesses in the case before us, which, however, while it showed the value which belonged to their evidence, has exposed them justly to severe animadversions.

[1] It has been stated, but we do not know whether upon good authority, that one medical man was importunate to be called to give evidence that the symptoms exhibited by Mr. Cook could have been those of *hydrophobia* only. This *angina pectoris* theory took the Attorney-General by surprise; and though, as we believe, not entitled to attention, it remained unshaken by any cross-examination.

We do not care to single out individuals to illustrate our position. To such of them as asseverated that the facts of the case were inconsistent with death by strychnia, and consistent with the various other causes which were assigned, it is enough now to say that neither the jury believed them, nor, we may add, the judges, nor any other competent persons who had an opportunity of forming an opinion. Well might the prisoner in the dock send down a note to his attorney, during the examination of one of his medical witnesses, to the effect that "this muff is doing more harm than good." If we are rightly informed, there were many more "muffs," or worse, proffering vain and ambiguous testimony, but whose offers, fortunately, were not accepted. The witness-box seems to be sought by some as a cheap advertisement, by others as the means of contradicting or discomfiting a rival; but from whatever cause it may arise, the worse danger to the administration of justice, and the greatest injury of the scientific character, will be incurred whenever it shall be known that professional witnesses may be *retained* to establish indifferently a case for either side. This is no fanciful danger; for we believe that there are few lawyers of considerable practice who could not within their experience give instances of the profligacy with which scientific testimony is tendered, and not in criminal cases only.

Far be it from us to characterize any profession, much less the medical, as generally untrustworthy or dishonest. Amongst its members are some of the brightest ornaments of society. It would, indeed, be the height of absurdity to condemn medical men as a class, or to accuse them of habitually violating one of their highest duties—that of deposing truly to facts within their observation, when called on so to do in courts of justice; but that there have been frequent occasions when, to use Lord Campbell's expression, the medical witness is turned into the retained advocate,[1] is as true

[1] Lord Campbell's antithesis really signifies this—that the witnesses he describes, under the pretext of swearing to a *fact*, depose to the consequence of an argument, whether it convince them or no, and independent of their belief in the truth of the premises or the accuracy of the reasoning, and the conclusions which they affirm. *Counsel* are bound to present arguments (whether convincing to themselves or no,)

as it is grievous, and when such occasions occur they call for most unrelenting comment. We dismiss now any further observation on this head.

As we have been led to make these remarks on professional morality, it is not altogether out of place to refer to the reflections which have been cast upon the bar,[1] with regard more especially to Palmer's trial. There are some popular portions of the press which habitually delight in attacking the conduct of counsel. A writer in a newspaper, for instance, picks out what he thinks, or supposes he may lead others to think, by "smart" writing, to be an error in the counsel in conducting his case; forthwith he slips on the snow-white garment of the rigid moralist, and pens a virtuous and indignant article. Thus our moral contributor, sitting up in his apartments in a London street, tries a capital case some three hundred miles off, which the law has however confided to the care of twelve weak jurymen, one imbecile judge, and perhaps four or five corrupt barristers, of large experience in criminal cases; and if the verdict is opposed to that of the self-constituted arbiter, and if the learned counsel for the defence cross-examine effectively, and speak eloquently, he is forthwith denounced by the upright author of pungent articles, and his name is righteously exposed to obloquy! Generally speaking, the spiteful paragraphs we are alluding to, although pointed at individuals, in order to give them the better zest, are really attacks, but ignorantly made, upon the principle of advocacy itself. They mean this (and apply equally to civil as criminal cases)—that inasmuch as it is assumed that one party to a suit or prosecution must always be in the wrong and the other in the right, the counsel who appears for him who has the law against him, is a conspirator with his client, who has injured his neighbor and refuses to atone for it. Now, it is too late in the day

and the Court decides on their soundness;—*witnesses* are bound to affirm their belief or their knowledge—the truth, the whole truth, and nothing but the truth, as they are convinced of it.

[1] We do not here refer to a contemptible and very stupid pamphlet, which is supposed to have been concocted by a disreputable person connected with the legal profession.

to argue about the morality of the advocate's profession. If any one really thinks it unconscientious for a lawyer to hold a brief until he has tried the case himself, and determined on the rectitude of his client, we will not quarrel with this opinion. We should, however, commend to his notice the conversation on this matter, now known to readers of books these sixty years, which was held between the poor, doubting Boswell and Dr. Johnson: "But do not you think, sir, that it is wrong to defend a person you know to be guilty?" asks the pure Boswell. "You do *not know* it, sir," answers the moralist; and in his own great way he explains the theory to his worthy biographer, as most of our readers must well remember.

In fact, no counsel appears for a prisoner who does not, by the very act of his standing up in his defence, protest the innocence of his client until the contrary be proved. He is to discredit the material statements preferred against his client, dispute the arguments adduced, dislocate the links of evidence presented, and insist with all his might and main upon the truth of his client's plea—"not guilty." He is not to admit into his own mind, and must exclude from the minds of others, any idea but the innocence of the man whose interests he is to protect, or he will place his client in a worse position than the law has placed him in. As Lord Campbell observed, the protests of a prisoner's counsel (who in uttering them is precluded from drawing the distinction between his professional and personal character) are in fact but equivalent to the plea of "not guilty." The common form employed by the advocate, who says to the jury, "After having heard the evidence, you will be able to come to no other conclusion but that of the innocence," or "the guilt of the prisoner," necessarily involves the notion that the effect of the evidence on the mind of the advocate himself is in harmony with that he imputes to the jury. The particular language, however, used on this occasion, afforded a convenient peg whereon to hang abuse of the legal profession, and a personal attack upon the eminent advocate who was concerned for the prisoner; and the opportunity was of course seized with vicious avidity.

The convict, as we have heard, went to the scaffold, denying that

he killed Cook by strychnia. Whether this was a subterfuge whereby the wretched man deceived himself into the belief that he was not positively stating a lie, it is useless to inquire; but probably he was right. It was *not pure strychnia* by which Cook was poisoned. The drugs ordinarily used by chemists and apothecaries are disgracefully adulterated; nay, it is notorious that one kind is often substituted for another. Now one grain of pure strychnia is a death-dose. The first purchase by Palmer of the poison of Newton[1] was *three* grains. Whatever amount may have been administered, it produced frightful convulsions, but did not prove fatal. The second purchase was *six* grains, and death ensued. Brucia (an extract of the *nux vomica*, as well as strychnia) is stated by Dr. Taylor to be often mixed with, and substituted for, strychnia, and is of one-sixth to one-twelfth of its strength; and he says, "unless you are sure of the purity of the article sold to you, you may be misled as to its strength." Now if three grains of the article first procured were impure, the failure in its effecting death is explained; but the *six* grains also of the impure drug, bought on the second occasion, might probably be just the quantity which would prove fatal. We have not heard, however, that the prosecution took the pains to test the qualities of the poison in the strychnia-bottles at Rugely, although it seems to us that it would have been a very proper course to pursue. And we may, *en passant*, observe, that experiments which *since* the trial have been made touching the effect which antimony in combination with strychnia has upon the discovery of the latter in a *post-mortem* examination, might well have been made *before* the trial.[2] Possibly, also, an investigation into this (as, indeed, is affirmed upon some authority) might have prevented the exceptional theory of decomposition of the poison in the blood being promulgated in court, by furnishing another sufficient explanation of the failure of the chemical examination.

[1] It has been said, on good authority, that the man has admitted that he sold it in the form of *pills:* at the trial he stated it was in the form of powder.

[2] The theory of the Attorney-General that Cook was *prepared* by antimony for strychnia seems very unnecessary. The evidence shows an intention to kill Cook by antimony, which was too slow in its operation, and strychnia was consequently resorted to.

We have just noticed that Palmer is said to have died without a confession of his guilt. To our minds this is of no value, so far as regards the propriety of the verdict and justice of the sentence. According to some continental systems, the confession of a prisoner must be extorted before he suffers the extreme penalty of the law. With us, although an admission of guilt may occasionally satisfy the scepticism of some people, and as proving penitence may be a relief to the minds of others, yet non-confession, as the annals of crime demonstrate, affords no ground whatever for inferring innocence. Physical temperament, strength of nerve, habitual hardihood, indifference to this life, and an inability to conceive of another (the prominent cause of this recklessness of the type of the immoral and brutal man) nay, even the desire of revenge, which, we know, is stronger with some men than the fear of death itself, may each be ample cause to induce a criminal to persist in his lies, though standing on the threshold of his doom. So, too, the demeanor of a prisoner during his trial is no test of innocence.

The "coolness," as it was called, of Palmer during his trial, was no doubt very great. Thus we are informed that whilst the evidence was accumulating against him in fearful masses, he leaned over the dock to learn who was "the winner of the Manchester cup." Thurtell went, however, further than this. A few hours before his execution he remarked, "It is *perhaps* wrong in my situation, but I own I should like to read Pierce Egan's account of the great fight yesterday," referring to the prize fight between two great heroes of the ring,—Spring and Langan. Tawell, too, another hard-souled villain, affords an example where confession was not resorted to by the convict to relieve his own mind, but made in indifference. Upon being pressed for it, this wretched man alleged that as he had promised it, he would perform his promise. Whether the confession in this case was true or not has never indeed been tested; for though the extraordinary version he gave of the murder has leaked out, it is not known upon any authenticity which we can cite. "It is true," says Sir Fitzroy Kelly, in a recent letter to Mr. Herapath relating to Tawell's trial, "that he confessed; but I have the best reason to believe his confession was that he committed the murder

indeed, but in a manner totally inconsistent with the truth of the scientific evidence upon which he had been convicted." Sir Fitzroy assumes the truth of the supposed statement of Tawell, which is more than we would do without sufficient corroboration; for the letter continues, "If this be so, it affords a remarkable proof of the caution with which all evidence of this character should be received."

There is also another point with respect to confessions, which should not be forgotten; viz.. the mental reservation which is not unfrequently practiced by a criminal. A part of the fact is truly narrated, upon the strength of which credit is taken to distort or deny others, whether material or immaterial. Thus, one of the horrid arsenic poisoners, Schonleben, whose long-continued iniquities are elaborately detailed by Feuerbach, *did* acknowledge that she had placed arsenic in a salt-*box*, but persisted to the last that she had not mixed any in the salt-*barrel*; although there could be no possible doubt of this fact, as well as of the former. An experienced authority, Colonel Chesterton,[1] in a recent work, has some remarks upon the subject of the confessions of criminals, so pertinent, that we shall borrow them. He says:—"There was something perfectly ridiculous in the all but universal claim to innocence on the part of convicts of all degrees. If ever an individual were found sufficiently candid to avow his fault, the rare exception would arise amongst those of superior education. But even in such a case, this would be intermingled with so much qualification, that the plea of justificatory circumstances would greatly detract from the honesty of the confession." Does any one doubt of the guilt of the demoniacal Rush, or of many others who died in sullen silence or vehement protest of innocence?[2]

[1] Revelations of Prison Life. 1856.

[2] There is one solemn protest of innocence, however, that of Elizabeth Fenning, tried in 1815, for attempting to poison the Turner family in Chancery Lane, which we think to have been true. The evidence offered was the best example of imperfect and inconclusive circumstantial evidence which the lawyer can find reported. In addition to which, the person who had mixed the arsenic in the food, admitted the crime when on the point of death. Such a terrible miscarriage of justice could hardly nowadays be permitted to occur. Sir Samuel Romilly has recorded his impression of this case in his Memoirs.

Recent criminal trials have brought before the public mind two points (amongst others) of great importance; the one is the facility which medical knowledge offers to the crime of poisoning; the other, the temptation which life insurance presents to the embarrassed and unscrupulous. Tawell was a chemist, Palmer a medical man; and other cases will also occur to the recollection of the reader, which for obvious reasons we do not here more particularly specify. The evil first referred to is one belonging to the nature of things, and we can suggest no practical safeguard. But with respect to insurances, it is a subject for consideration—seeing it was found needful to meet the evil of burial-clubs among the lower classes—whether that of speculation on life amongst the higher, apart from commensurate interest, does not call for some legislative interposition. Insurance companies are now heard declaring they are continually defrauded, and even point to murder as a means employed to rob them. Do they use ordinary caution for self-protection? Is it not notorious, for instance, that within a very short period one case has come to light where an unfortunate man, in impoverished circumstances, and with a certainty of speedy death before him, trafficked on his own life—effecting policies within one year to the amount of *many thousand pounds*, and disposed of them to wealthier speculators, who bought them of him immediately at a premium? Do insurance offices examine the facts of the case fairly *before* they grant policies? or, in the struggle to do business, are they reckless or indifferent? and do they not thus connive at the iniquity which they afterwards are ready to plead as an excuse for non-payment? We will not enter upon the subject more at large; but it is one which calls at least for serious consideration. No doubt unnecessary legislative interference with contracts is to be deprecated; but the question is what *is* needful.

That Palmer was a speculator on lives, no one can doubt; and how he could have made any profit by insuring for 25,000*l.* the life of the stableman George Bates, "Esq.," except upon the supposition that he was to be disposed of, we own we are at a loss to conjecture. Palmer, during the year 1855, had insured his own brother's life for 13,000*l.*, and had made proposals to different other

offices for about six times this amount. The life dropped within twelve months. So, too, the wife of Palmer died after the payment of the first premium on a large insurance effected by the husband. It is impossible almost to avoid the horrible suspicion that the verdicts of the coroner's juries on these two cases are well founded, and that both were the victims of a murderer, for the sake of the insurances; and further, that he had in contemplation the death of Bates. Wainwright's atrocities years back, too, are not forgotten; and there are certain directors of insurance offices who could unfold tales of no imaginary horrors, which have of late incidentally come to their knowledge, though they have never been, nor will now be, brought to light. Such facts as these at least suggest to our minds that there is a stringent need for insurance offices to mend their ways themselves, if they do not wish to have them mended by the law.

RECENT AMERICAN DECISIONS.

Louisville Chancery Court, Kentucky, August, 1856.

FRAUDULENT CONVEYANCE AND ASSIGNMEMT FOR THE BENEFIT OF CREDITORS.

HOOPER, SON & CO. *vs.* ROSENTHAL, ETC.

1. Whether a debtor who has made a fraudulent conveyance can afterwards assign the property so conveyed, to be applied to the payment of his debts, or not?
2. Is there any difference between the conveyance of such property to others in trust for the payment of debts, and a conveyance directly to the creditors themselves?
3. A conveyance of property of every kind whatsoever in trust for the payment of debts will include property previously conveyed to defraud creditors, unless it is held adversely by the fraudulent vendee.
4. The British doctrine with regard to assignments for the benefit of creditors, and the American doctrine.
5. The opinion of Chancellor Kent, in Bayard *vs.* Hoffman, 4 Johns. Ch., 450, adhered to, notwithstanding subsequent decisions.

PIRTLE, Chancellor.—Rosenthal made a deed of assignment to Mendell in trust for the payment of his debts, in which certain preferences were made among his creditors. The plaintiffs were